

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 21-0128V

UNPUBLISHED

NICOLE LUNG,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: May 5, 2023

Special Processing Unit (SPU);
Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Bridget Candace McCullough, Muller Brazil, LLP, Dresher, PA, for Petitioner.

*Benjamin Patrick Warder, U.S. Department of Justice, Washington, DC, for
Respondent.*

DECISION AWARDING DAMAGES¹

On January 6, 2021, Nicole Lung filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”).³ Petitioner alleges that she suffered left shoulder injuries related to vaccine administration (“SIRVA”) resulting from the influenza vaccination she received on December 6, 2019. Amended Petition at 1. Petitioner further alleges the vaccination was administered within the United States, her symptoms lasted for more than six months, and neither she, nor any other party, has ever filed any action or received compensation in the form of an award or settlement for Petitioner’s vaccine-related injuries. Amended

¹ Because this unpublished Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims’ website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

³ Petitioner filed an Amended Petition on May 20, 2021. See ECF No. 9.

Petition at 1, 4-5. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On April 12, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 4, 2023, Respondent filed a proffer on award of compensation ("Proffer") indicating Petitioner should be awarded \$97,500.00. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$97,500.00 (all of which is for pain and suffering) in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.⁴

IT IS SO ORDERED.

s/Brian H. Corcoran
Brian H. Corcoran
Chief Special Master

⁴ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

On January 6, 2021, Nicole Lung (“petitioner”) filed a petition for compensation (ECF No. 1) under the National Childhood Vaccine Injury Act of 1986, as amended (“Vaccine Act”), 42 U.S.C. §§ 300aa-1 to -34, alleging that she received an influenza (“flu”) vaccination on December 6, 2019, and thereafter suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table. ECF No. 1 at 1. Petitioner filed her first amended petition (ECF No. 9) on May 20, 2021. The amended petition provided an expanded set of facts based on petitioner’s medical records; however, it contained no changes to the legal allegations brought in this case. *See* ECF No. 9. On March 29, 2023, the Secretary of Health and Human Services (“respondent”) filed a Rule 4(c) report (ECF No. 30) indicating that this case was appropriate for compensation under the terms of the Vaccine Act for a SIRVA Table injury. On April 12, 2023, the Chief Special Master issued a Ruling on Entitlement (ECF No. 31) finding that petitioner was entitled to compensation.

I. Item of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$97,500.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

This amount represents all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Petitioner is a competent adult. Evidence of guardianship is not required in this case. Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Chief Special Master's decision and the Court's judgment award the following:¹ a lump sum payment of \$97,500.00, in the form of a check payable to petitioner.

III. Summary of Recommended Payment Following Judgment

Lump sum payable to petitioner, Nicole Lung: **\$97,500.00**

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

ALEXIS B. BABCOCK
Assistant Director
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/s/ Benjamin P. Warder
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